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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE:

B-204547

DATE:

March 4, 1982

MATTER OF:

International Business Investments

DIGEST:

Agency may properly require that contractor possess specific State license, as a matter of bidder responsibility, where failure to meet requirement may adversely affect quality of performance.

International Business Investments (IBI) protested prior to bid opening the Department of Health & Human Services' (HHS) inclusion of a requirement that bidders submit evidence of a specific State license under solicitation No. 221-81-2031(b) for guard/security services. IBI submitted the second low bid, and the contract was awarded to the low bidder which held the required license. IBI contends that licensing has no bearing on the award of a Federal contract and has a prejudicial affect on bidding. We deny the protest because a contracting agency may require a bidder to hold a specific license, as a matter of responsibility.

HHS canceled a prior solicitation for these services due to the low bidder's inability to obtain the license in a timely manner. This resolicitation occurred when the guard/security services were urgently needed. The agency considered licensing to be a matter of responsibility. HHS believes that contractor possession of the license will result in effective contract performance by assuring State police assistance in the arrest and prosecution of suspects initially apprehended by contractor personnel.

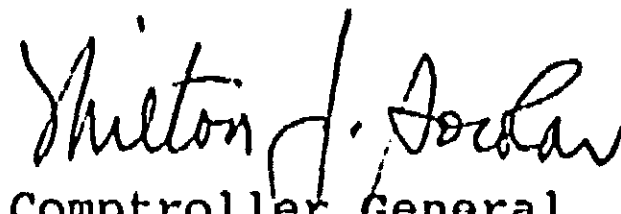
In 53 Comp. Gen. 51, 53 (1973), we noted a significant distinction between IBI's position, that the duty of ascertaining the existence and applicability of local licensing laws should be left to the contractor,

"* * * and cases in which the contracting officer validly requires bidders to hold a specified State license. Where the contracting officer is aware of and familiar with those local requirements and incorporates those requirements into a solicitation, it may well be decided that possession by the bidder of the particular license is a prerequisite for an affirmative determination of responsibility. In such situations the requirement may properly be included in the solicitation * * *.

"To view the matter otherwise would be tantamount to requiring a contracting officer to award a contract that he knows may well be significantly delayed or even unperformed because of noncompliance with a known State licensing requirement. We are aware that State licensing requirements may not be enforceable against Federal Government contractors, Leslie Miller Inc. v. Arkansas, 352 U.S. 187 (1956). However, we think it is reasonable for a contracting officer to be more concerned with whether the contract will be carried out properly and without interference than whether he will ultimately prevail in litigation."

In view of this, we conclude that HHS's decision to require a specific State license was proper.

Accordingly, we deny the protest.

for 
Comptroller General
of the United States